

ORDER NO. 6080

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Michael Kubayanda, Chairman;
Ann C. Fisher, Vice Chairman;
Mark Acton;
Ashley E. Poling; and
Robert G. Taub

Market Test of Experimental Product –
USPS Connect Local Mail

Docket No. MT2022-1

ORDER AUTHORIZING MARKET TEST OF
EXPERIMENTAL PRODUCT – USPS CONNECT LOCAL MAIL

(Issued January 4, 2022)

I. INTRODUCTION

On November 10, 2021, the Postal Service filed notice of its intent to conduct a market test of an experimental product called USPS Connect Local Mail beginning on January 9, 2022.¹ For the reasons discussed below, the Commission finds that the proposed market test is consistent with 39 U.S.C. § 3641 and authorizes the market test to proceed.

¹ United States Postal Service Notice of Market Test of Experimental Product – USPS Connect Local Mail, November 10, 2021, at 3 (Notice).

II. SUMMARY OF THE PROPOSED MARKET TEST

The Postal Service proposes to introduce USPS Connect Local Mail, an experimental offering derivative of First-Class Mail, as an alternative to long-distance, end-to-end mailing for use by business mailers who wish to send mail locally with regular frequency. See Notice at 1-2. The Postal Service asserts that “local document delivery could benefit from increased competition, and that economical local document delivery is a market that is currently underserved by [the Postal Service].” *Id.* at 1. As such, according to the Postal Service, USPS Connect Local Mail (as well as its planned package-focused counterpart, USPS Connect Local²) is designed to offer improved access to the Postal Service network for local mailers and will leverage the Postal Service’s current “last-mile infrastructure to create economical new solutions for customers.” *Id.* at 2.

The Postal Service states that USPS Connect Local Mail will be available at destination delivery units (DDUs) or by carrier pick-up in the line-of travel (LOT). *Id.* It also states that it will offer same-day or next-day delivery, 6 days per week, with customers receiving same-day or next-day delivery based on whether they have entered their mail within the critical entry time. *Id.* The Postal Service adds that it will offer tracking services for USPS Connect Local Mail. *Id.* According to the Postal Service, “[d]ocuments mailed using this service must be paper-based and may contain personal information.” *Id.* at 3.

² In a separate proceeding to adjust Competitive product rates, Docket No. CP2022-22, the Postal Service proposed, and the Commission approved, the addition of “USPS Connect Local” as a new price category under the existing Parcel Select product. See Docket No. CP2022-22, Order Approving Changes in Rates of General Applicability for Domestic Competitive Products, December 21, 2021, at 9-10 (Order No. 6071).

The Postal Service plans to offer USPS Connect Local Mail at \$2.95 for a letter- or flat- size mailpiece with a weight of up to 13 ounces. *Id.* at 2. It will allow customers to pay for this service using Click-N-Ship.³ According to the Postal Service, USPS Connect Local Mail will cover its attributable costs, which it estimates to be \$2.03 per piece based on the volume-variable cost of Priority Mail flats, modified to reflect differences in mail processing, transportation, and packaging costs. Notice at 2-3.

The Postal Service states that USPS Connect Local Mail will be tested nationwide with a phased rollout. *Id.* at 3.

III. PROCEDURAL HISTORY

A. The Notice and Initial Commission Action

The Postal Service asserts that the proposed market test meets the requirements of 39 U.S.C. § 3641 and 39 C.F.R. part 3045. *See id.* On November 16, 2021, the Commission issued an order establishing the docket, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁴

³ *See id.* at 3; *see also* Response of the United States Postal Service to Chairman's Information Request No. [3], December 14, 2021, question 1 (Response to CHIR No. 3); Notice of United States Postal Service of Filing Errata, December 15, 2021. The Postal Service asserts that it has limited the available payment options for USPS Connect Local Mail because "[t]he market test is designed to help determine what requirements, standards or processes will be best suited for the product, and streamlining the available payment options, thereby limiting variables will help the Postal Service properly evaluate the test." Response to CHIR No. 3, question 3. According to the Postal Service, because not all locations will be providing USPS Connect Local Mail, the use of Click-N-Ship "affords USPS control over program eligibility and ensures that customers only enter mail for destinations that offer USPS Connect Local Mail service[.]" thus "prevent[ing] customers from printing labels, paying for postage, and bringing their mail pieces to the delivery unit only to find out that the location or destination is not supported as part of USPS Connect Local Mail." *Id.* It notes that, should it request to make USPS Connect Local Mail a permanent product, it will consider offering broader payment options and a retail acceptance option. *Id.* question 4.c.

⁴ Notice and Order Concerning Market Test of Experimental Product – USPS Connect Local Mail, November 16, 2021, at 5 (Order No. 6038).

B. Additional Information Regarding the Proposed Market Test

On November 23, 2021, the Commission issued an information request to clarify the basis of information provided by the Postal Service in its Notice.⁵ On November 30, 2021, the Postal Service filed its response, with portions filed under seal.⁶ The responses provided additional information regarding the parameters of USPS Connect Local Mail service; the product's estimated volume, cost, and pricing; and the nature and scope of the proposed market test. *See generally* Response to CIR No. 1. The Postal Service also identifies four competitors currently providing a product similar to USPS Connect Local Mail: United Parcel Service, Inc. (UPS), FedEx Corporation (FedEx), "local couriers[.]" and "[s]maller companies that deliver documents on an expedited basis." *Id.* question 4.

On November 24, 2021, the Public Representative requested that the Commission issue an information request to obtain sufficient information to evaluate the proposed market test.⁷ On November 29, 2021, Chairman's Information Request No. 1 was issued.⁸ To provide interested persons an opportunity to consider the responses to CHIR No. 1 in their comments, the Commission extended the comment deadline to December 13, 2021.⁹

⁵ Commission Information Request No. 1, November 23, 2021 (CIR No. 1).

⁶ Response of the United States Postal Service to Commission Information Request No. 1, November 30, 2021 (Response to CIR No. 1); Notice of United States Postal Service of Filing Errata, December 28, 2021 (revising response to question 3).

⁷ Motion of the Public Representative for Issuance of Information Request, November 24, 2021 (PR Motion to Issue Information Request).

⁸ Chairman's Information Request No. 1, November 29, 2021 (CHIR No. 1).

⁹ See Order Granting Motion to Extend Comment Deadline, December 7, 2021, at 2 (Order No. 6055) (extending comment deadline to 3 business days after filing of complete responses to CHIR No. 1); Motion of the Public Represen[t]ative to Extend Comment Deadline, December 7, 2021.

On December 8, 2021, the Postal Service filed its responses to CHIR No. 1.¹⁰ These responses were accompanied by a motion requesting that the Commission accept the Postal Service's late filing, which is hereby granted.¹¹ The Postal Service's responses provided additional information regarding the features of USPS Connect Local Mail, the relevant market in which the product operates, and other products comparable to USPS Connect Local Mail. *See generally* Response to CHIR No. 1.

On December 3, 2021, Chairman's Information Request No. 2 was issued to further clarify the USPS Connect Local Mail market test.¹² The Postal Service responded (with portions filed under seal) on December 10, 2021, providing additional information on tracking scans, alternative service options, and costs for USPS Connect Local Mail.¹³

The Package Shippers Association also filed a motion requesting that the Commission issue an information request concerning the proposed market test.¹⁴ On December 7, 2021, Chairman's Information Request No. 3 was issued.¹⁵ The Postal Service filed its response on December 14, 2021, providing information related to postage and payment options for USPS Connect Local Mail. *See generally* Response to CHIR No. 3.

¹⁰ Response of the United States Postal Service to Chairman's Information Request No. 1, December 8, 2021 (Response to CHIR No. 1).

¹¹ USPS Motion for Late Acceptance of Response to Chairman's Information Request No. 1, December 8, 2021 (Motion for Late Acceptance).

¹² Chairman's Information Request No. 2 and Notice of Filing Under Seal, December 3, 2021 (CHIR No. 2).

¹³ *See generally* Response of the United States Postal Service to Chairman's Information Request No. 2, December 10, 2021 (Response to CHIR No. 2).

¹⁴ Motion of Package Shippers Association for Issuance of Information Request, December 6, 2021 (PSA Motion to Issue Information Request).

¹⁵ Chairman's Information Request No. 3, December 7, 2021 (CHIR No. 3).

C. Comments

The Public Representative filed comments on December 13, 2021.¹⁶ After initially summarizing the assertions made by the Postal Service in its Notice, the Public Representative conducts her own analysis of the USPS Connect Local Mail market test under the requirements of 39 U.S.C. § 3641(b). PR Comments at 4-14. Identifying several differences between USPS Connect Local Mail and potentially similar products offered by the Postal Service, she agrees with the Postal Service that USPS Connect Local Mail will satisfy 39 U.S.C. § 3641(b)(1). PR Comments at 4-6. She also agrees with the Postal Service that USPS Connect Local Mail will not create an unfair competitive advantage for the Postal Service because of the “noticeable differences” between its product and the services offered by other companies in the local, expedited letter delivery market, such as “more convenient options for pick-up, [the] ability to rely on guaranteed delivery time[] frames, or available options for add-on services like insurance.” *Id.* at 9. As it pertains to small business concerns, she again highlights the differences between USPS Connect Local Mail and services provided by local delivery businesses, finding that the Postal Service’s assertion that it therefore will not “directly compete” with these companies to be reasonable. *Id.* at 10. Thus, under this framework, she “concludes there is no indication that the introduction of USPS Connect Local Mail will create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns.” *Id.* at 11 (internal citations omitted). She does note, however, that because of the potential vast variance among the services offered by local couriers and delivery companies, it is difficult to determine whether the Postal Service has an unfair competitive advantage in that sphere. *Id.* at 9.

¹⁶ Public Representative Comments on USPS Connect Local Mail Market Test, December 13, 2021 (PR Comments).

In terms of the requirement under 39 U.S.C. § 3641(b)(3) that the Postal Service correctly identify the experimental product as either Market Dominant or Competitive, the Public Representative states that the Postal Service “fails to provide any additional explanation or supporting data that would indicate the Postal Service is likely to exercise sufficient market power of a product of this kind in compliance with 39 U.S.C. § 3641(b)(3).” *Id.* at 11. She asserts that the Postal Service should have compared and contrasted USPS Connect Local Mail with other products and services offered in the relevant market and conducted an analysis as to whether it could effectively set the price of USPS Connect Local Mail substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business. *Id.* at 12. She notes that, instead of conducting such an analysis, the Postal Service argues that USPS Connect Local Mail should be classified as Market Dominant due to the Postal Service’s postal monopoly, despite it producing “no information that supports [this] assertion.” *Id.* at 13-14. Because of these failures, as well as the fact that “there are aspects of the product that make it appear it could be categorized as competitive,” she states that she cannot conclude that USPS Connect Local Mail satisfies 39 U.S.C. § 3641(b)(3). *Id.* at 14-15.

The Public Representative concludes that, despite her “position that the Postal Service’s Notice does not strictly comply with 39 U.S.C. § 3641, she generally supports the proposed market test of USPS Connect Local Mail.” *Id.* at 19.

Additionally, the Public Representative also expresses her concern that “[a]ssuming USPS Connect Local Mail is correctly categorized as market-dominant, ... the Postal Service’s offering may violate 39 U.S.C. § 404(c).” *Id.* at 17. This statute requires that the Postal Service maintain one or more mail classes that are sealed against inspection, the rates of which shall be uniform throughout the United States. 39 U.S.C. § 404(c). According to the Public Representative, the Commission has also interpreted this requirement to mandate that a local delivery product sealed against inspection be *offered* nationally, if at all. *Id.* at 18. Because not every Post Office will have the capacity to accept and deliver USPS Connect Local Mail, the Public

Representative “urges the Commission to consider whether USPS Connect Local Mail would violate 39 U.S.C. § 404(c), but recognizes that such an analysis may be more appropriate in the future, should the Postal Service seek to launch USPS Connect Local Mail as a permanent product offering under 39 U.S.C. § 3642.” *Id.* at 19.

IV. COMMISSION ANALYSIS

Based on a review of the record, including all of the documentation filed publicly and under seal, the Commission concludes that the USPS Connect Local Mail market test satisfies 39 U.S.C. § 3641(b). Accordingly, the market test is authorized to proceed. Below, the Commission discusses the applicable statutory and regulatory requirements, including data collection and reporting.

A. Requirements of 39 U.S.C. § 3641(b)

A proposed market test cannot proceed unless the experimental product satisfies three requirements: (1) “[t]he product is, from the viewpoint of the mail users, significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test[;]” (2) “[t]he introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns[;]” and (3) “[t]he Postal Service identifies the product...as either market-dominant or competitive[.]” 39 U.S.C. § 3641(b).

1. Significantly Different Product

The Commission must determine if USPS Connect Local Mail is significantly different from all other Postal Service products offered within the past 2 fiscal years. *Id.* § 3641(b)(1); 39 C.F.R. § 3045.3(a)(1)(i). The Postal Service asserts that USPS Connect Local Mail is significantly different from the other products offered by the Postal Service within the past 2 years, and the Public Representative agrees with this assertion. See Notice at 3-4; PR Comments at 6. The Postal Service does not

currently offer an expedited First-Class Mail product specifically designed for local mailers (with pricing that reflects this shorter delivery range) that includes tracking and free packaging. Notice at 3-4. Moreover, while Priority Mail Express and Priority Mail can be used to deliver local mail, USPS Connect Local Mail differs from those products because its lower costs reflect its more restricted induction and delivery area and because it “is not guaranteed, non-refundable, allows no extra services, and no Pick Up on Demand or Hold for Pick Up.” See Response to CHIR No. 1, question 1.d. The Commission agrees and finds that USPS Connect Local Mail satisfies 39 U.S.C. § 3641(b)(1) and 39 C.F.R. § 3045.3(a)(1)(i).

2. Market Disruption

The USPS Connect Local Mail market test may not proceed unless the Commission finds that the “introduction or continued offering” of the product will not create market disruption, which is defined as “an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns.”¹⁷ “[I]ntroduction or continued offering” requires the Commission to evaluate market disruption both at the beginning of the market test and throughout the duration of the market test to ensure continued compliance with 39 U.S.C. § 3641(b)(2). Based on the record before it, the Commission finds no indication at this stage that the introduction of USPS Connect Local Mail will cause market disruption.

The Commission uses a four-step framework for analyzing market disruption.¹⁸ The Commission must: (1) identify the relevant market for the product in question; (2) identify businesses offering similar products or services in that relevant market; (3) evaluate whether the introduction or continued offering of the experimental product

¹⁷ 39 U.S.C. § 3641(b)(2). “Small business concern” is defined in 39 C.F.R. § 3010.101(t).

¹⁸ Docket No. MT2014-1, Order Authorizing Customized Delivery Market Test, October 23, 2014, at 9-12 (Docket No. MT2014-1, Order No. 2224).

will create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer with regard to the service providers identified in step 2; and (4) examine the impact of the market test on small business concerns in the relevant market. Docket No. MT2014-1, Order No. 2224 at 9-12.

As explained above, the first step of the market disruption analysis is to identify the relevant market for the USPS Connect Local Mail market test. For market tests, the Commission identifies the relevant market by examining the description of the experimental product and the geographic area(s) where the Postal Service intends to offer the experimental product during the market test duration. *Id.* at 9. The Postal Service describes the relevant market for the USPS Connect Local Mail experimental product as expedited letter mail service, with local induction and local delivery, offered nationwide. Response to CHIR No. 1, question 2.a. The Commission concurs with this description of the relevant market, with the clarification that, due to the exclusively local nature of the service being provided, a business does not need to operate on a nationwide basis to participate in the market.

The second step of the relevant analysis is to identify businesses offering similar products or services in the local, expedited letter mail service market. See Docket No. MT2014-1, Order No. 2224 at 10. The Postal Service identified four local induction and delivery service providers offering products similar to USPS Connect Local Mail: UPS (overnight and/or 2-day delivery), FedEx (overnight and/or 2-day delivery), local couriers, and smaller companies that deliver documents locally on an expedited basis.¹⁹

The third step is to evaluate whether the introduction or continued offering of USPS Connect Local Mail will create “an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer” with regard to these four service

¹⁹ Response to CIR No. 1, question 4; see also Response to CHIR No. 1, question 2.c. The inclusion of local couriers and smaller companies that deliver documents locally in this list is consistent with the description of the relevant market as potentially including businesses that do not operate on a nationwide basis.

providers. See Docket No. MT2014-1, Order No. 2224 at 10 (quoting 39 U.S.C. § 3641(b)(2)).

The Commission previously found that notices of market tests should include “[e]xamples of businesses that offer similar products or services” and “[t]he range of prices these businesses charge for similar products and services” at a minimum. Docket No. MT2014-1, Order No. 2224 at 13. To better assess possible market disruption, CHIR No. 1 requested that the Postal Service identify the competitors and provide information concerning the range of prices charged by competitors for products similar to USPS Connect Local Mail.²⁰ The Postal Service identified the competitors and noted the lack of visibility into competitors’ pricing, stating that “the Postal Service does not have access to precise pricing information from specific couriers” and that FedEx and UPS do not mention specific pricing for same-day service on their websites. Response to CHIR No. 1, questions 2.c.-2.d. The Postal Service does note that FedEx and UPS’s next-day and 2-day delivery services are “approximately \$23.20 (UPS) or \$29.55 (FedEx) and up depending on service selected.” *Id.* question 2.d.

The Postal Service asserts that “USPS Connect Local Mail will not create an unfair advantage over courier service because they typically build in pick-up on demand services which differentiates their product from USPS Connect Local Mail and justifies the higher price.” *Id.* question 2.e. With respect to FedEx and UPS, the Postal Service notes that those companies have “similar enough ground transportation facilities and locations,” meaning that USPS Connect Local Mail should not have an advantage over those companies’ products. *Id.* Nonetheless, the Postal Service states that the “comparison is not straightforward, as USPS Connect Local Mail offers limited scanning

²⁰ See CHIR No. 1, question 2. The Commission notes that, by failing to include this required information in its Notice, the Postal Service has delayed the evaluation process and made it more difficult for interested parties to provide comments on the proposed market test before the comment deadline initially established by the Commission. See Order No. 6055 at 2. The Commission expects that the Postal Service will be attentive to providing all requisite information at the time of filing the initial notice of a planned market test so as to facilitate the public’s ability to comment timely and the Commission’s ability to conclude its review so that the Postal Service may begin the market test on its planned effective date.

options (i.e., acceptance and delivery scans only) and is not eligible for additional services such as insurance or signature confirmation.” *Id.* The Public Representative finds these assertions reasonable, saying that “[a]lthough other businesses offer similar products or services in the relevant market, these other products or services have noticeable differences[.]” PR Comments at 9. The Postal Service adds that introducing the experimental product would not create an unfair or inappropriate competitive advantage related to the Postal Service’s planned exercise of operational discretion regarding the specific mail acceptance and payment processing details during the initial market test period. See Response to CHIR No. 3, question 6. Based on its evaluation of the information provided by the Postal Service and the comments, the Commission agrees that the introduction of USPS Connect Local Mail is unlikely to create an unfair or inappropriate competitive advantage. See 39 U.S.C. § 3641(b)(2).

The fourth step of the market disruption analysis involves examining the impact of the market test on “small business concerns” in the relevant market. Docket No. MT2014-1, Order No. 2224 at 11. The Postal Service asserts that USPS Local Connect Mail was “designed to increase small business access to the [Postal Service] network and...leverages the Postal Service’s existing delivery network to address a need for locally-focused small businesses,” thus “offer[ing] a low-priced alternative in a market that is arguably underserved by [the Postal Service].” Notice at 4. It also notes that, because of the differences between USPS Connect Local Mail and the services provided by local couriers and messengers (on-demand pick-up, guarantees, etc.), USPS Connect Local Mail will not directly compete with these small businesses. Response to CHIR No. 1, question 2.f. The Commission accepts these assertions as reasonable. While not dispositive, no small business filed comments in opposition to the market test in this proceeding.

Applying the framework discussed above, the Commission finds that the record contains no indication that testing USPS Connect Local Mail will “create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns.” 39 U.S.C. § 3641(b)(2).

In accordance with section 3641(b)(2), while this market test is ongoing, the Commission will evaluate whether the “continued offering” of the experimental product creates market disruption. To assess continued compliance with section 3641(b)(2), the Commission will review data reported by the Postal Service as part of the market test’s data collection plan. See Section IV.B.2., *infra*. In addition, under the Commission’s rules, the Postal Service must notify the Commission at least 10 days before implementing any material changes to the market test or the services offered under the market test. See 39 C.F.R. § 3045.6(a). Material changes are changes that may affect compliance with 39 U.S.C. § 3641 and include, without limitation, adjustments to prices, geographic scope, eligibility for service, and termination date. *Id.*

The statute and the Commission’s rules contain additional safeguards. The Commission may limit the amount of revenues the Postal Service may obtain as necessary to prevent market disruption. 39 U.S.C. § 3641(e)(1); 39 C.F.R. § 3045.15. If necessary, the Commission may also cancel the market test or take other action that it deems appropriate. 39 U.S.C. § 3641(f); 39 C.F.R. § 3045.12.

Potential concerns can also be addressed if and when the Postal Service requests to extend the market test or to make it a permanent product. See 39 C.F.R. §§ 3045.11, .18. In evaluating any request for an extension or permanent product status, the Commission will rely on the data collected by the Postal Service in its quarterly reports. See 39 C.F.R. §§ 3045.11, .18, .20. This proceeding is limited to authorizing the introduction of USPS Connect Local Mail as an experimental product. The Commission reserves judgment on whether a future application from the Postal Service to make the USPS Connect Local Mail product permanent would satisfy the applicable requirements. If such an application is made, the Commission will evaluate the data collected during the market test to assess that application. At that time, the Commission will also issue a notice concerning that request and provide an opportunity for interested parties to comment. 39 C.F.R. § 3040.133.

3. Correct Classification

A proposed market test product must be characterized as Market Dominant or Competitive. 39 U.S.C. § 3641(b)(3). The Postal Service's proposed categorization of the product must be consistent with the criteria of 39 U.S.C. § 3642(b)(1). *See id.* Products shall be classified as Market Dominant if "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." *Id.* § 3642(b)(1). All other products shall be classified as Competitive. *Id.* However, each product covered by the postal monopoly, which refers to any product for which conveyance or transmission is reserved to the Postal Service pursuant to 18 U.S.C. § 1696, may not be transferred from the Market Dominant product list. *See id.* § 3642(b)(2). The Postal Service states that USPS Connect Local Mail is correctly categorized as Market Dominant given the Postal Service's monopoly over delivering letters over postal routes (which arises from the "Private Express Statutes"²¹) and because "the Postal Service is not structuring USPS Connect Local Mail to meet any of the exceptions or suspensions to the Private Express Statutes." Notice at 4. The Public Representative notes that USPS Connect Local Mail appears to fit within the postal monopoly, and the Commission concurs. *See PR Comments at 14.* Moreover, the experimental product at issue is a derivative of existing offerings within First-Class Mail, which are correctly classified as Market Dominant products.²² Additionally, the Commission does not find that the Postal Service's proposed identification of USPS Connect Local Mail as a Market Dominant product is inconsistent with the criteria of 39 U.S.C. § 3642(b)(1) given that the Postal Service expects to introduce an experimental product that lacks a number of service conveniences and options made available in the

²¹ See 18 U.S.C. §§ 1693-1699 and 39 U.S.C. §§ 601-606.

²² See, e.g., Docket No. MT2019-1, Order Authorizing Plus One Market Test, September 20, 2019, at 12 (Order No. 5239) (finding that Plus One, an add-on to the Market Dominant product USPS Marketing Mail Letters, was properly identified as Market Dominant).

competitive sphere. See, e.g., Response to CHIR No. 1, questions 1.d., 2.e., 2.f., 3. Accordingly, the Commission accepts the Postal Service's proposal to classify USPS Connect Local Mail as a Market Dominant product for purposes of initiating the market test.²³

As discussed above, the Public Representative did express concerns over whether the USPS Connect Local Mail product was correctly classified as Market Dominant but noted that "although [this issue] will need to be resolved should the Postal Service seek permanent status for USPS Connect Local Mail, actual implementation of the market test and the collection of thorough data should provide enough insight to clarify" this concern. PR Comments at 19. The Commission acknowledges the Public Representative's concerns that the Postal Service failed to conduct a proper market power analysis under 39 U.S.C. § 3642(b)(1), as required by 39 U.S.C. § 3641(b)(3). See *id.* at 11-14. Nevertheless, the safeguards inherent in the market test process mentioned above—the limited duration and revenue, the reporting requirements, the requirement that the Postal Service provide advance notice of any material change, evaluation of the product as a "continued offering," and the reevaluation of the product should the Postal Service wish to extend the test or offer the product permanently—weigh in favor of allowing the market test to proceed.

Similarly, the data collected throughout the market test will serve to better illuminate whether the product is correctly categorized as Market Dominant. Should the Postal Service attempt to offer USPS Connect Local Mail on a permanent basis, the Commission reserves the right to revisit its categorization as Market Dominant based on these data. Additionally, if the Postal Service submits a request to convert USPS Connect Local Mail into a non-experimental offering (such as a permanent product, permanent price category, or a negotiated service agreement), the Postal Service must comply with 39 C.F.R. § 3045.18 and 39 C.F.R. part 3040, subpart B. See 39 C.F.R.

²³ This reading ensures that 39 U.S.C. § 3643(b)(3) is interpreted in a manner that maximizes harmony with 18 U.S.C. § 1696 and potential considerations related to permanent product status that may arise under 39 U.S.C. § 3642(b)(2).

§ 3045.18(a). The Commission expects that such a request would include, among other things, the information and supporting justification that would enable correct categorization of the proposed offering. See 39 C.F.R. §§ 3040.131, 3040.132.

Finally, the Commission addresses the concern that USPS Connect Local Mail, if classified as a Market Dominant product (and more specifically its classification as a derivative of First-Class Mail), may violate 39 U.S.C. § 404(c)'s uniform rate requirement. See PR Comments at 17. Section 404(c) requires that the Postal Service "maintain one or more classes of mail for the transmission of letters sealed against inspection. The rate for each such class shall be uniform throughout the United States, its territories, and possessions." 39 U.S.C. § 404(c). The Public Representative's concern arises from a prior statement of the Postal Rate Commission that the uniform rate requirement "does not obviously preclude adoption of a separate classification category with a reduced rate for 'local only' mail, but it would appear to mandate that such a classification and rate be made available on identical terms throughout the nation's postal system."²⁴ This prior statement was made in the context of rejecting a proposal for a non-experimental category of reduced rates for local First-Class Mail. See Docket No. MC95-1, Opinion at V-40-41. However, the express terms of 39 U.S.C. § 404(c) do not preclude the planned market test, which proposes to set a uniform rate of \$2.95 and be made available nationwide. See Notice at 2. The Postal Service plans to implement USPS Connect Local Mail via a phased rollout that would expand retail acceptance and delivery locations included in the market test over time. See *id.* at 3; Response to CHIR No. 1, question 2.a.; Response to CHIR No. 3, questions 3, 4.c. Such plans are rational operational decisions intended to facilitate the launch of a successful experimental product. Similarly, the Postal Service's plans to initially implement USPS Connect Local Mail nationwide using internet-based payment options

²⁴ Docket No. MC95-1, Opinion and Recommended Decision Sec. 5, January 26, 1996, at V-40-41 (Docket No. MC95-1, Opinion). At the time of the Postal Rate Commission's decision, the uniform rate requirement was formerly codified as 39 U.S.C. § 3623(d); it was subsequently recodified at 39 U.S.C. § 404(c). Postal Accountability and Enhancement Act, Pub. L. 109-435, 120 Stat 3198, 3262 (Dec. 20, 2006).

to better monitor customer interest, perform follow-up, and track performance are within its operational discretion to enable testing of the experimental product.²⁵ Consistent with the purpose of 39 U.S.C. § 3641, the Commission encourages the Postal Service to use the market test period to experiment with the operational requirements, standards, and processing so as to broaden the reach of the test over time and to facilitate the future provision of a successful non-experimental offering. If the Postal Service intends to transform USPS Connect Local Mail into a non-experimental offering, the Commission reserves the right to revisit issues related to 39 U.S.C. § 404(c).

B. Other Statutory and Regulatory Requirements

1. Revenues

Generally, experimental product revenues may not exceed \$10 million in any fiscal year, as adjusted for the change in the consumer price index for all urban consumers (CPI-U), which is referred to as the \$10 Million Adjusted Limitation.²⁶ The \$10 Million Adjusted Limitation for FY 2022 is \$12,431,795.²⁷ The Postal Service asserts that although “[v]olumes and revenues for USPS Connect Local Mail are difficult to predict,” should the revenues approach this amount, the Postal Service “will furnish the appropriate notice to the Commission and submit an application for exemption from the cap under 39 U.S.C. § 3641(e)(2) in a timely manner.” Notice at 5. No commenters assert that the Postal Service would exceed the revenue limitation.

²⁵ See Response to CHIR No. 3, questions 4.b., 5-6. Initially, a mailer will need a Click-N-Ship account to participate in the market test. See *id.* questions 4.b.-4.c. Registering for a Click-N-Ship account is free and available via <https://www.usps.com/ship/online-shipping.htm>.

²⁶ See 39 U.S.C. §§ 3641(e)(1), 3641(g); 39 C.F.R. § 3045.15(b), (c); Postal Regulatory Commission, Available Market Dominant Rate Authority, last updated December 10, 2021, at 4, available at <https://www.prc.gov/sites/default/files/Available%20Rate%20Authority%2012-10-21.pdf> (FY 2022 Market Test Revenue Limitations).

²⁷ See FY 2021 Market Test Revenue Limitations at 4. Consistent with 39 C.F.R. § 3045.15, this figure is calculated and updated on the Commission’s website www.prc.gov; hover over “References” and click on “Available Rate Authority.”

If the Postal Service expects total revenues from the USPS Connect Local Mail market test to exceed the revenue limitation, it should apply for an exemption at least 45 days before it expects total revenues to exceed this limitation. See 39 C.F.R. § 3045.16(e). Upon request, the Commission may approve an exemption to allow revenues to exceed this \$10 Million Adjusted Limitation.²⁸ The Commission will make available its calculation of the FY 2023 market test revenue limitations at the beginning of FY 2023. The Postal Service should file the application for an exemption in accordance with the requirements of 39 U.S.C. § 3641(e)(2) and 39 C.F.R. § 3045.16. The data collection plan will facilitate the Commission's ability to continually review the USPS Connect Local Mail market test's compliance with the annual revenue limitation.

2. Reporting Requirements

For each market test, the Postal Service must provide quarterly reports of volumes and revenues disaggregated by geographic area, as well as reports of attributable costs incurred in conducting the test.²⁹ Data collection reports must be filed within 40 days after the close of each fiscal quarter. See 39 C.F.R. § 3045.20(d).

²⁸ See 39 U.S.C. § 3641(e)(2); 39 C.F.R. § 3045.16; FY 2022 Market Test Revenue Limitations at 4. Under the exemption, the experimental product revenues may not exceed \$50 million in any fiscal year, as adjusted for the change in the CPI-U, which is referred to as the \$50 Million Adjusted Limitation. See *id.* The \$50 Million Adjusted Limitation for FY 2022 is \$62,158,974. FY 2022 Market Test Revenue Limitations at 4. Consistent with 39 C.F.R. § 3045.16, this figure is calculated and updated on the Commission's website, www.prc.gov; hover over "References" and click on "Available Rate Authority."

²⁹ See 39 C.F.R. § 3045.20(a). The Public Representative notes that it appears that the Postal Service only intends to report data associated with USPS Connect Local Mail's costs on an annual basis. PR Comments at 17 (citing Notice at 5). The Commission emphasizes that, while revenue and volume are required to be reported on a *quarterly* basis under 39 C.F.R. § 3045.20(a), there is no analogous requirement for the reporting of attributable costs in the regulation. Nevertheless, "[t]he Commission may request additional information or data as it deems appropriate." 39 C.F.R. § 3045.20(b). Here, the Commission directs the Postal Service to provide attributable costs on a quarterly basis.

The Commission may also request additional information as appropriate. *Id.* § 3045.20(b). In order to facilitate the Commission's continued evaluation of the USPS Connect Local Mail market test, the Commission directs the Postal Service to report the following data on a quarterly basis:

- Total revenues generated from the market test by fiscal quarter, disaggregated by geographic area;
- Total volume of mail pieces delivered via USPS Connect Local Mail by fiscal quarter, disaggregated by geographic area and acceptance method (DDU dropship or Carrier LOT Pickup);
- Attributable costs incurred in conducting the market test, including carrier and clerk labor costs, packaging costs, and any product-specific costs related to the provision of USPS Connect Local Mail service; and
- Administrative and start-up costs.

Should the Commission determine that additional information is necessary or helpful to assess whether the continued offering of USPS Connect Local Mail creates an inappropriate competitive advantage, it reserves the right to request such information at that time.

3. Duration

A market test may not exceed 24 months in duration unless the Commission authorizes an extension for up to an additional 12 months. 39 U.S.C. § 3641(d); 39 C.F.R. §§ 3045.10-.11. The Postal Service states that it intends for the market test to begin on January 9, 2022, and to run for 2 full years. Notice at 3. The USPS Connect Local Mail market test is approved to begin on January 9, 2022, and will expire 2 years later on January 8, 2024, unless the market test is extended or cancelled.³⁰

The Postal Service states that it may seek to extend the market test for an additional year or file a request to seek permanent product status early. Notice at 3. If

³⁰ See 39 U.S.C. § 3641(d)(2) and 39 C.F.R. § 3045.11; 39 U.S.C. § 3641(f) and 39 C.F.R. § 3045.12.

the Postal Service seeks to extend the market test beyond January 8, 2024, it must file a written request for an extension at least 60 days before the market test is scheduled to expire. 39 U.S.C. § 3641(d)(2); 39 C.F.R. § 3045.11. An extension request must meet the requirements of 39 U.S.C. § 3641(d)(2) and 39 C.F.R. § 3045.11.

V. ORDERING PARAGRAPHS

It is ordered:

1. The Postal Service's Motion for Late Acceptance, filed December 8, 2021, is hereby granted.
2. Based on the record before it, the Commission finds that the proposed USPS Connect Local Mail market test is consistent with 39 U.S.C. § 3641 and authorizes the market test to proceed.
3. The USPS Connect Local Mail market test will begin on January 9, 2022, and expire on January 8, 2024, unless the market test is extended or cancelled as described in the body of this Order.
4. The Postal Service shall file quarterly data collection reports in this docket within 40 days after the close of each fiscal quarter that contain the information described in the body of this Order.
5. Revisions to the Market Dominant product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.

6. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Erica A. Barker
Secretary

CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3040, subpart A—Market Dominant Product List. These changes reflect the Commission’s order in Docket No. MT2022-1. The Commission used two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Appendix A to Subpart A of Part 3040—Market Dominant Product List

Market Tests*

USPS Connect Local Mail

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part A—Market Dominant Products
1000 Market Dominant Product List

Market Tests*

USPS Connect Local Mail

1800 Market Tests

1804 USPS Connect Local Mail

Reference

Docket No. MT2022-1

PRC Order No. 6080, January 4, 2022

Expires

January 8, 2024
